

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

IOVATE HEALTH SCIENCES U.S.A., INC., et al.,

Plaintiffs,

v.

WELLNX LIFE SCIENCES INC., et al.,

Defendants.

C.A. No. 07-286-JJF

**MOTION TO SUBSTITUTE PLAINTIFF
PURSUANT TO FED. R. CIV. P. 25(c)**

1. Plaintiffs Iovate Health Sciences U.S.A., Inc. and Iovate T&P, Inc. (collectively “Iovate” or “Plaintiffs”), hereby respectfully move, pursuant to Federal Rule of Civil Procedure 25(c), for leave to substitute “Iovate Health Sciences, Inc.” – the current owner by assignment of United States Patent No. 5,973,199 (“the ‘199 patent”) – for “Iovate Health Sciences U.S.A., Inc.” as a party plaintiff in this action.

2. This patent infringement action was filed on May 24, 2007. The original Complaint accurately alleged that then-plaintiff Flamma S.p.A. (“Flamma”) was the owner and assignee of the ‘199 patent. D.I. 1 at ¶ 19. Flamma subsequently transferred its interest in the ‘199 patent to “Iovate Health Sciences, Inc.” *See* Exh. A.

3. Plaintiffs intended to include the transfer of interest in the ‘199 patent as one of the changes reflected in the First Amended Complaint. *See* D.I. 35 (Plaintiffs’ Unopposed Motion for Leave to File First Amended Complaint).¹ However, Plaintiffs inadvertently (and incorrectly) alleged that “Iovate Health Sciences U.S.A., Inc.” (instead of “Iovate Health

¹ Plaintiffs removed Slimquick Laboratories as a defendant, removed Flamma S.p.A. and Use Techno Corporation as plaintiffs, removed its allegation of infringement under U.S. Patent No. 6,716,459, and added a count of infringement under U.S. Patent No. 6,277,396.

Sciences, Inc.”) is the owner through assignment of the '199 patent. *See* First Amended Complaint (D.I. 40) at ¶ 16.

4. Upon discovering this apparent typographical error in the First Amended Complaint, Plaintiffs informed Defendants and requested their consent to file a Second Amended Complaint which corrected the name of the entity which now owned the '199 patent.²

5. Defendants refused to consent to the proposed amendment unless Plaintiffs agreed to meet several conditions, including dropping all claims against the Individual Defendants, Bradley and Derek Woodgate. That condition was unacceptable to Plaintiffs, and therefore Plaintiffs seek leave of court to substitute “Iovate Health Sciences, Inc.” for “Iovate Health Sciences U.S.A., Inc.” as a party plaintiff in this action.

6. Rule 25(c) permits substitutions when, as here, an interest is transferred during a lawsuit:

Transfer of Interest. If an interest is transferred, the action may be continued by or against the original party, unless the court, on motion, orders the transferee to be substituted in the action or joined with the original party. . . .

Fed. R. Civ. P. 25(c). The rule is “designed to allow an action to continue unabated when an interest in a lawsuit changes hands,” rather than requiring the initiation of an entirely new lawsuit. *General Battery Corp. v. Globe-Union, Inc.*, 100 F.R.D. 258, 261 (D. Del. 1982). Substitution of parties under Rule 25(c) is generally within the sound discretion of the trial court. *Luxliner P.L. Export, Co. v. RDI/Luxliner, Inc.*, 13 F.3d 69, 72 (3d Cir. 1993).

² Plaintiffs also wanted to use the opportunity to clean up a less consequential pleading error, by deleting all references to original plaintiff “Iovate Health Sciences International, Inc.” The First Amended Complaint removed all allegations of infringement under U.S. Patent No. 6,716,459, and therefore that entity is no longer asserting any claims in the action.

7. Under these circumstances, it is clearly a better use of the court's and the parties' resources to permit the substitution, rather than requiring the initiation of an entirely new lawsuit. The '199 patent has been in the case from its inception. The parties' first sets of interrogatories and document requests (recently served on March 19, 2008 and March 24, 2008; *see* D.I. 54, 55) cover the '199 patent. Thus, the proposed substitution will not affect the scope of discovery or the case schedule, and there is no prejudice to Defendants.

8. Indeed, Defendants did not object to the proposed substitution on grounds of prejudice or delay. Defendants simply withheld their consent as a "bargaining chip" to try to force Plaintiffs to dismiss the Individual Defendants from the case.

CONCLUSION

10. For all of the reasons set forth herein, Iovate respectfully requests that the Court enter an order in the form attached hereto, substituting "Iovate Health Sciences, Inc." for "Iovate Health Sciences U.S.A., Inc." as a party plaintiff in this action, and amending the case caption accordingly.³

YOUNG CONAWAY STARGATT & TAYLOR LLP

/s/ Karen L. Pascale

April 8, 2008

Josy W. Ingersoll (No. 1088)
 John W. Shaw (No. 3362)
 Karen L. Pascale (No. 2903) [kpascale@ycst.com]
 Karen E. Keller (No. 4489)
 The Brandywine Building
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 P.O. Box 391
 Wilmington, Delaware 19899-0391
 Telephone: 302-571-6600
Attorneys for Plaintiffs

³ If the Court prefers, Plaintiffs stand ready to file a Second Amended Complaint in the form attached hereto as Exhibit B. A redline copy showing the changes from the First Amended Complaint (by striking through deletions and double-underlining additions) is also attached, as Exhibit C.

OF COUNSEL:

Richard L. DeLucia
Howard J. Shire
Jerry Canada
KENYON & KENYON LLP
One Broadway
New York, NY 10004
(212) 425-7200

CERTIFICATE OF SERVICE

I, Karen L. Pascale, Esq., hereby certify that on April 8, 2008, the foregoing document was electronically filed with the Clerk of the Court using CM/ECF, which will send notification that such filing is available for viewing and downloading to the following counsel of record:

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James W. Parrett, Jr., Esq. [jparrett@mnat.com]
MORRIS NICHOLS ARSHT & TUNNELL LLP
1201 N. Market Street
Wilmington, DE 19899

Additionally, I hereby certify that the foregoing document was served on counsel of record as indicated below:

By Hand Delivery and E-Mail

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YOUNG CONAWAY STARGATT & TAYLOR LLP

/s/ Karen L. Pascale

April 8, 2008

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P.O. Box 391
Wilmington, Delaware 19899-0391
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Attorneys for Plaintiffs

EXHIBIT A

FORM PTO-1585

RECORDATION FORM COVER SHEET

U.S. DEPARTMENT OF COMMERCE

Patent and Trademark Office

PATENTS ONLY

To the Director of the US Patent and Trademark Office: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Flamma S.p.a

Additional name(s) of conveying parties attached? ☐ Yes ☒ No

2. Name and address of receiving party(ies):

Name: Iovate Health Sciences, Inc.Street Address: 5100 Spectrum WayCity and State: Mississauga, Ontario, Canada 14W 5S2Additional name(s) & address(es) attached? ☐ Yes ☒ No

3. Nature of conveyance:

- ☒ Assignment ☐ Merger
☐ Security Agreement ☐ Change of Name (notarized)
☐ Other: _____

Execution dates: June 27, 2007

4. Application numbers or patent numbers:

A. Application No.(s)

B. Patent No.(s)

5,973,199

Additional Numbers attached? ☐ Yes ☒ No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Payam Moradian, Esq.Internal Address: KENYON & KENYON LLPStreet Address: One BroadwayCity: New York State: New York ZIP: 10004

CUSTOMER NO. 26646

6. Total number of applications and patents involved: 1

7. Total fee (37 C.F.R. 3.41) \$ 40.00

☐ Enclosed☒ Authorized to be charged to deposit account

8. Deposit account number:

11-0600

DO NOT USE THIS SPACE

9. Statement and signature. *To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.*

Payam Moradian (Reg. No. 52,048)

Name of Person Signing

Signature

Date

Total Number of pages including cover sheet, attachments and document: 3

OMB No. 0651-0011 (exp. 4/94)

Do not detach this portion

Mail documents to be recorded with required cover sheet information to:

Mail Stop: Assignment Recordation Services

Director of the US Patent and Trademark Office

P. O. Box 1450

Alexandria, VA 22313-1450 Public burden reporting for this sample cover sheet is estimated to average about 30 minutes per document to be recorded, including time for reviewing the document and gathering the data needed and completing and reviewing the sample cover sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Office of Information Systems, PK2-1000C, Washington D.C. 20231, and to the Office of Management and Budget, Paperwork Reduction Project (0605-0011), Washington, D.C. 20503

EXHIBIT A

PATENT ASSIGNMENT

WHEREAS, Flamma SpA, a corporation organized and existing under the laws of Italy with its principal address at Via Bedeschi, 22 - 24040 CHIGNOLO D'ISOLA - BG, Italy (hereinafter "Assignor") and Iovate Health Sciences, Inc., an Ontario corporation having a principal place of business at 5100 Spectrum Way, Mississauga, Ontario, L4W 5S2 Canada (hereinafter "Assignee"):

WITNESSETH THAT:

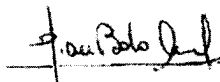
WHEREAS, the Assignor is the owner of all right, title and interest in and to United States Patent No. 5,973,199 ("the '199 patent"):

WHEREAS, the Assignee wishes to acquire from the Assignor all right, title and interest in and to the '199 patent:

NOW, THEREFORE, to all whom it may concern, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Assignor by these presents does hereby sell, transfer, convey and assign unto the Assignee its entire right, title and interest in and to the '199 patent, and the right to sue for and recover for the past infringements thereof.

FLAMMA SPA

By



Name:

Dr. G. Paolo NEGRISOLI

Title:

President & C.E.O.

Date:

27th June 2007

FLAMMA S.p.A.

Via Bedeschi, 22
24040 CHIGNOLO D'ISOLA (BG)
Tel. 035/49.91.611 - Fax 035/49.91.612

EXHIBIT B

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

IOVATE HEALTH SCIENCES, INC.,)	
and IOVATE T & P, INC.,)	
)	
Plaintiffs,)	
)	
v.)	
)	
WELLNX LIFE SCIENCES INC (d/b/a NV Inc.),)	Civil Action No. 07-286-JJF
NXCARE INC.,)	
NXLABS INC.,)	JURY TRIAL DEMANDED
BIOGENETIX,)	
DEREK WOODGATE, and)	
BRADLEY WOODGATE,)	
)	
Defendants.)	

SECOND AMENDED COMPLAINT

Plaintiffs Iovate Health Sciences, Inc., and Iovate T & P, Inc. (collectively “Iovate” or “Plaintiffs”), hereby allege for their Complaint against WellNx Life Sciences Inc. (“WellNx”) (d/b/a NV Inc.), NxCare Inc. (“NxCare”), NxLabs Inc. (“NxLabs”), Biogenetix, Derek Woodgate and Bradley Woodgate (collectively “Defendants”), on personal knowledge as to their own activities and on information and belief as to all other matters, as follows:

PARTIES

1. Iovate Health Sciences, Inc. is a corporation organized and existing under the laws of Ontario, Canada, with its principal place of business at 381 North Service Road West, Oakville, ON, Canada, L6M 0H4.

2. Iovate T & P, Inc. is a corporation organized and existing under the laws of Ontario, Canada, with its principal place of business at 381 North Service Road West, Oakville, ON, Canada, L6M 0H4.

3. Upon information and belief, Defendant WellNx is a corporation organized and existing under the laws of Ontario, Canada, with a place of business at 1680 Tech Avenue, Unit 1, Mississauga, ON, Canada, L4W 5S9, and/or 218 Silvercreek Parkway, Guelph, ON, Canada.

4. Upon information and belief, Defendant NxCare is a corporation organized and existing under the laws of Ontario, Canada, with a place of business at 1680 Tech Avenue, Unit 1, Mississauga, ON, Canada, L4W 5S9.

5. Upon information and belief, Defendant NxLabs is a corporation organized and existing under the laws of Ontario, Canada, with a place of business at 1680 Tech Avenue, Unit 1, Mississauga, ON, Canada, L4W 5S9.

6. Upon information and belief, Defendant Biogenetix is a corporation organized and existing under the laws of Ontario, Canada, with a place of business at 1680 Tech Avenue, Unit 1, Mississauga, ON, Canada, L4W 5S9.

7. Upon information and belief, Defendants Derek Woodgate and Bradley Woodgate are individuals and the founders of WellNx, (and its predecessor entities) NxCare, NxLabs, Biogenetix, and are officers, shareholders, and/or directors of WellNx, NxCare, NxLabs, Biogenetix, and personally direct and control the activities herein complained.

8. Upon information and belief, Defendant Derek Woodgate resides at 1594 Waldie Avenue, Milton, ON, Canada, L9T 5K8.

9. Upon information and belief, Defendant Bradley Woodgate resides at 803-373 Front Street West, Toronto, ON, Canada, M5V-3R7.

JURISDICTION AND VENUE

10. This is an action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code. Accordingly, this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338.

11. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1331, 1391(b), 1391(d) and 1400.

12. Upon information and belief, Defendant WellNx maintains an office at 1201 N. Orange Street, Suite 741, Wilmington, DE, 19801.

13. Upon information and belief, Defendant NxCare maintains an office at 874 Walker Rd., Dover, DE 19904.

GENERAL ALLEGATIONS

14. On October 26, 1999, United States Patent No. 5,973,199 (“the ’199 patent”), titled “Hydrosoluble Organic Salts of Creatine,” was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the ’199 patent is attached as Exhibit A of this Complaint.

15. Iovate Health Sciences, Inc. is the owner through assignment of the ’199 patent.

16. On October 19, 1999, United States Patent No. 5,968,900 (“the ’900 patent”), titled “Increasing Creatine and Glycogen Concentration in Muscle,” was duly issued by the United States Patent and Trademark Office. A true and correct copy of the ’900 patent is attached as Exhibit B of this Complaint.

17. Iovate T & P is the owner of all rights, title and interest in and to the ’900 patent.

18. On August 21, 2001, United States Patent No. 6,277,396 (“the ’396 patent”), titled “Dietary Supplement Containing a Thermogenic Substance and an Adrenal Support Substance,”

was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the '396 patent is attached as Exhibit C of this Complaint.

19. Iovate T & P is the owner through assignment of the '396 patent.

20. Upon information and belief, Defendants have made, used, offered for sale, sold and/or imported nutritional supplements, including, Vaso, Vaso XP, Hyper Growth, Lean Hyper Growth, Muscle Expansion Pack, Pump System, Creatine-D²T, REVxp Hardcore, Methyl Ripped, Ripped System and/or NV throughout the U.S. and in this judicial district.

21. The supplement information for Vaso lists "Tri-creatine malate."

22. The supplement information for Vaso XP lists "Tri-creatine malate."

23. The supplement information for Hypergrowth lists 10 grams of creatine derivatives (micronized creatine monohydrate, trcreatine malate and buffered creatine), and "InsuTech." "Each serving of Hypergrowth delivers 10g of CreaPlex3 . . . for maximum creatine absorbtion and retention."

24. The supplement information for Lean Hypergrowth lists 10 grams of creatine derivatives (micronized creatine monohydrate, trcreatine malate and buffered creatine) and "InsuTech."

25. The supplement information for Muscle Expansion Pack (Anavol, Vaso) lists "Tri-creatine malate."

26. The supplement information for Pump System (Vaso, Plasmavol, NO Surge) lists "Tri-creatine malate."

27. The product label for Creatine-D²T lists 4000 mg of Creatine derivatives (Creatine Ethyl Ester, Creatine AKG, and Creatine Decanoate) per serving, and an "Insulin Signaling Complex".

28. The supplement information for REVxp Hardcore lists caffeine anhydrous, 70 % total catechins, ginseng, and 4-hydroxyisoleucine (from fenugreek)(seed).

29. The supplement information for Methyl Ripped lists di-caffeine alpha ketoglutarate, di-caffeine malate, esterified green tea extract (standardized for 45% 45% Epigallocatechin Gallate (EGCG) Ester, 2% Epicatechin Gallate (ECG) Ester, 2% Gallocatechin Gallate (GCG) Ester, 1% Catechin Gallate (CG) Ester), Guggulesterones E&Z HCl, and Ashwagandha.

30. The supplement information for Ripped System (Methyl Ripped, Methyl Dry) lists di-caffeine alpha ketoglutarate, di-caffeine malate, esterified green tea extract (standardized for 45% 45% Epigallocatechin Gallate (EGCG) Ester, 2% Epicatechin Gallate (ECG) Ester, 2% Gallocatechin Gallate (GCG) Ester, 1% Catechin Gallate (CG) Ester), Guggulesterones E&Z HCl, and Ashwagandha.

31. The supplement information for NV lists Green Tea Extract (Leaf)(Standardized for polyphenols and Epigallocatechin Gallate (EGCG)), Panax Ginseng Extract, and Alpha-Lipoic Acid.

FIRST CAUSE OF ACTION
(Infringement of the '199 Patent)

32. Plaintiffs repeat and re-allege the allegations of paragraphs 1-31 of the Complaint as if set forth herein.

33. By their actions, Defendants have infringed and are infringing the '199 patent.

34. Upon information and belief, the infringement by Defendants has been and continues to be willful.

35. As a result of Defendants' acts of infringement, Plaintiffs have suffered and will continue to suffer damages in an amount to be proved at trial.

SECOND CAUSE OF ACTION
(Infringement of the '900 Patent)

36. Plaintiffs repeat and re-allege the allegations of paragraphs 1-35 of the Complaint as if set forth herein.

37. By their actions, Defendants infringed and are infringing the '900 patent.

38. Upon information and belief, the infringement by Defendants has been and continues to be willful.

39. As a result of Defendants' acts of infringement, Plaintiffs have suffered and will continue to suffer damages in an amount to be proved at trial.

THIRD CAUSE OF ACTION
(Infringement of the '396 Patent)

40. Plaintiffs repeat and re-allege the allegations of paragraphs 1-39 of the Complaint as if set forth herein.

41. By their actions, Defendants infringed and are infringing the '396 patent.

42. Upon information and belief, the infringement by Defendants has been and continues to be willful.

43. As a result of Defendants' acts of infringement, Plaintiffs have suffered and will continue to suffer damages in an amount to be proved at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for entry of judgment against each Defendant as follows:

A. The Defendants infringe the '199, '900 and '396 patents by their making, using, offering for sale, selling and/or importing nutritional supplements, including Vaso and/or Vaso XP, Hyper Growth, Lean Hyper Growth, Muscle Expansion Pack, Pump System, Creatine-D²T, REVxp Hardcore, Methyl Ripped, Ripped System and NV;

B. That Defendants' infringement of the '199, '900 and '396 patents is willful;

C. That Defendants, their officers, directors, affiliates, agents, servants, employees and attorneys, and all those persons acting in privity or in concert with any of them, be preliminarily and permanently enjoining from infringement of the '199, '900 and '396 patents;

D. That Plaintiffs be awarded their damages for infringement of the '199, '900 and '396 patents, and that the damages be trebled;

E. That this case be declared to be exceptional in favor of Plaintiffs under 35 U.S.C. § 285, and that Plaintiffs be awarded their costs, attorneys' fees, and other expenses incurred in connection with this action;

F. That Plaintiffs be awarded such other and further relief as may be appropriate.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury.

YOUNG CONAWAY STARGATT & TAYLOR LLP

Dated: May 1, 2008

Josy W. Ingersoll (No. 1088)
John W. Shaw (No. 3362)
Karen L. Pascale (No. 2903)
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(212) 425-7200

EXHIBIT C

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

IOVATE HEALTH SCIENCES, INC.,)	
IOVATE HEALTH SCIENCES INTERNATIONAL, INC.,)	
and IOVATE T & P, INC.,)	
)	
Plaintiffs,)	
)	
v.)	
)	Civil Action No. 07-286-JJF
WELLNx LIFE SCIENCES INC (d/b/a NV Inc.),)	
NxCARE INC.,)	JURY TRIAL DEMANDED
NXLABS INC.,)	
BIOGENETIX,)	
DEREK WOODGATE, and)	
BRADLEY WOODGATE,)	
)	
Defendants.)	

~~FIRST~~SECOND AMENDED COMPLAINT

Plaintiffs Iovate Health Sciences ~~U.S.A., Inc. (“Iovate U.S.A.”), Iovate Health Sciences International, Inc. (“Iovate International”), Inc.,~~ and Iovate T & P, Inc. (~~“Iovate T & P”~~) (collectively “Iovate” or “Plaintiffs”), hereby allege for their Complaint against WellNx Life Sciences Inc. (“WellNx”) (d/b/a NV Inc.), NxCare Inc. (“NxCare”), NxLabs Inc. (“NxLabs”), Biogenetix, Derek Woodgate and Bradley Woodgate (collectively “Defendants”), on personal knowledge as to their own activities and on information and belief as to all other matters, as follows:

PARTIES

1. ~~Iovate U.S.A. is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 3880 Jeffrey Boulevard, Blasdell, New York, NY, 14129.~~

1. ~~2.~~Iovate ~~International~~Health Sciences, Inc. is a corporation organized and existing under the laws of Ontario, Canada, with its principal place of business at 381 North Service Road West, Oakville, ON, Canada, L6M 0H4.

2. ~~3.~~Iovate T & P, Inc. is a corporation organized and existing under the laws of Ontario, Canada, with its principal place of business at 381 North Service Road West, Oakville, ON, Canada, L6M 0H4.

3. ~~4.~~Upon information and belief, Defendant WellNx is a corporation organized and existing under the laws of Ontario, Canada, with a place of business at 1680 Tech Avenue, Unit 1, Mississauga, ON, Canada, L4W 5S9, and/or 218 Silvercreek Parkway, Guelph, ON, Canada.

4. ~~5.~~Upon information and belief, Defendant NxCare is a corporation organized and existing under the laws of Ontario, Canada, with a place of business at 1680 Tech Avenue, Unit 1, Mississauga, ON, Canada, L4W 5S9.

5. ~~6.~~Upon information and belief, Defendant NxLabs is a corporation organized and existing under the laws of Ontario, Canada, with a place of business at 1680 Tech Avenue, Unit 1, Mississauga, ON, Canada, L4W 5S9.

6. ~~7.~~Upon information and belief, Defendant Biogenetix is a corporation organized and existing under the laws of Ontario, Canada, with a place of business at 1680 Tech Avenue, Unit 1, Mississauga, ON, Canada, L4W 5S9.

7. ~~8.~~Upon information and belief, Defendants Derek Woodgate and Bradley Woodgate are individuals and the founders of WellNx, (and its predecessor entities) NxCare, NxLabs, Biogenetix, and are officers, shareholders, and/or directors of WellNx, NxCare, NxLabs, Biogenetix, and personally direct and control the activities herein complained.

8. ~~9.~~ Upon information and belief, Defendant Derek Woodgate resides at 1594 Waldie Avenue, Milton, ON, Canada, L9T 5K8.

9. ~~10.~~ Upon information and belief, Defendant Bradley Woodgate resides at 803-373 Front Street West, Toronto, ON, Canada, M5V-3R7.

JURISDICTION AND VENUE

10. ~~11.~~ This is an action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code. Accordingly, this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338.

11. ~~12.~~ Venue is proper in this Court pursuant to 28 U.S.C. §§ 1331, 1391(b), 1391(d) and 1400.

12. ~~13.~~ Upon information and belief, Defendant WellNx maintains an office at 1201 N. Orange Street, Suite 741, Wilmington, DE, 19801.

13. ~~14.~~ Upon information and belief, Defendant NxCare maintains an office at 874 Walker Rd., Dover, DE, 19904.

GENERAL ALLEGATIONS

14. ~~15.~~ On October 26, 1999, United States Patent No. 5,973,199 (“the ’199 patent”), titled “Hydrosoluble Organic Salts of Creatine,” was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the ’199 patent is attached as Exhibit A of this Complaint.

15. ~~16.~~ Iovate Health Sciences-~~U.S.A.~~, Inc. is the owner through assignment of the ’199 patent.

16. ~~17.~~ On October 19, 1999, United States Patent No. 5,968,900 (“the ’900 patent”), titled “Increasing Creatine and Glycogen Concentration in Muscle,” was duly issued by the

United States Patent and Trademark Office. A true and correct copy of the '900 patent is attached as Exhibit B of this Complaint.

17. ~~18.~~ Iovate T & P is the owner of all rights, title and interest in and to the '900 patent..

18. ~~19.~~ On August 21, 2001, United States Patent No. 6,277,396 ("the '396 patent"), titled "Dietary Supplement Containing a Thermogenic Substance and an Adrenal Support Substance," was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the '396 patent is attached as Exhibit C of this Complaint.

19. ~~20.~~ Iovate T & P is the owner through assignment of the '396 patent.

20. ~~21.~~ Upon information and belief, Defendants have made, used, offered for sale, sold and/or imported nutritional supplements, including, Vaso, Vaso XP, Hyper Growth, Lean Hyper Growth, Muscle Expansion Pack, Pump System, Creatine-D²T, REVxp Hardcore, Methyl Ripped, Ripped System and/or NV throughout the U.S. and in this judicial district.

21. ~~22.~~ The supplement information for Vaso lists "Tri-creatine malate."

22. ~~23.~~ The supplement information for Vaso XP lists "Tri-creatine malate."

23. ~~24.~~ The supplement information for Hypergrowth lists 10 grams of creatine derivatives (micronized creatine monohydrate, trcreatine malate and buffered creatine), and "InsuTech." "Each serving of Hypergrowth delivers 10g of CreaPlex3 . . . for maximum creatine absorbtion and retention."

24. ~~25.~~ The supplement information for Lean Hypergrowth lists 10 grams of creatine derivatives (micronized creatine monohydrate, trcreatine malate and buffered creatine) and "InsuTech."

25. ~~26.~~ The supplement information for Muscle Expansion Pack (Anavol, Vaso) lists “Tri-creatine malate.”

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27. ~~28.~~ The product label for Creatine-D²T lists 4000 mg of Creatine derivatives (Creatine Ethyl Ester, Creatine AKG, and Creatine Decanoate) per serving, and an “Insulin Signaling Complex”.

28. ~~29.~~ The supplement information for REVxp Hardcore lists caffeine anhydrous, 70 % total catechins, ginseng, and 4-hydroxyisoleucine (from fenugreek)(seed).

29. ~~30.~~ The supplement information for Methyl Ripped lists di-caffeine alpha ketoglutarate, di-caffeine malate, esterified green tea extract (standardized for 45% 45% Epigallocatechin Gallate (EGCG) Ester, 2% Epicatechin Gallate (ECG) Ester, 2% Gallocatechin Gallate (GCG) Ester, 1% Catechin Gallate (CG) Ester), Gugglesterones E&Z HCl, and Ashwagandha.

30. ~~31.~~ The supplement information for Ripped System (Methyl Ripped, Methyl Dry) lists di-caffeine alpha ketoglutarate, di-caffeine malate, esterified green tea extract (standardized for 45% 45% Epigallocatechin Gallate (EGCG) Ester, 2% Epicatechin Gallate (ECG) Ester, 2% Gallocatechin Gallate (GCG) Ester, 1% Catechin Gallate (CG) Ester), Gugglesterones E&Z HCl, and Ashwagandha.

31. ~~32.~~ The supplement information for NV lists Green Tea Extract (Leaf)(Standardized for polyphenols and Epigallocatechin Gallate (EGCG)), Panax Ginseng Extract, and Alpha-Lipoic Acid.

FIRST CAUSE OF ACTION
(Infringement of the '199 Patent)

32. ~~33.~~ Plaintiffs repeat and re-allege the allegations of paragraphs 1-~~32~~31 of the Complaint as if set forth herein.

33. ~~34.~~ By their actions, Defendants have infringed and are infringing the '199 patent.

34. ~~35.~~ Upon information and belief, the infringement by Defendants has been and continues to be willful.

35. ~~36.~~ As a result of Defendants' acts of infringement, Plaintiffs have suffered and will continue to suffer damages in an amount to be proved at trial.

SECOND CAUSE OF ACTION
(Infringement of the '900 Patent)

36. ~~37.~~ Plaintiffs repeat and re-allege the allegations of paragraphs 1-~~36~~35 of the Complaint as if set forth herein.

37. ~~38.~~ By their actions, Defendants infringed and are infringing the '900 patent.

38. ~~39.~~ Upon information and belief, the infringement by Defendants has been and continues to be willful.

39. ~~40.~~ As a result of Defendants' acts of infringement, Plaintiffs have suffered and will continue to suffer damages in an amount to be proved at trial.

THIRD CAUSE OF ACTION
(Infringement of the '396 Patent)

40. ~~41.~~ Plaintiffs repeat and re-allege the allegations of paragraphs 1-~~40~~39 of the Complaint as if set forth herein.

41. ~~42.~~ By their actions, Defendants infringed and are infringing the '396 patent.

42. ~~43.~~ Upon information and belief, the infringement by Defendants has been and continues to be willful.

43. ~~44.~~ As a result of Defendants' acts of infringement, Plaintiffs have suffered and will continue to suffer damages in an amount to be proved at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for entry of judgment against each Defendant as follows:

A. The Defendants infringe the '199, '900 and '396 patents by their making, using, offering for sale, selling and/or importing nutritional supplements, including Vaso and/or Vaso XP, Hyper Growth, Lean Hyper Growth, Muscle Expansion Pack, Pump System, Creatine-D²T, REVxp Hardcore, Methyl Ripped, Ripped System and NV;

B. That Defendants' infringement of the '199, '900 and '396 patents is willful;

C. That Defendants, their officers, directors, affiliates, agents, servants, employees and attorneys, and all those persons acting in privity or in concert with any of them, be preliminarily and permanently enjoining from infringement of the '199, '900 and '396 patents;

D. That Plaintiffs be awarded their damages for infringement of the '199, '900 and '396 patents, and that the damages be trebled;

E. That this case be declared to be exceptional in favor of Plaintiffs under 35 U.S.C. § 285, and that Plaintiffs be awarded their costs, attorneys' fees, and other expenses incurred in connection with this action;

F. That Plaintiffs be awarded such other and further relief as may be appropriate.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury.

YOUNG CONAWAY STARGATT & TAYLOR LLP

Dated: ~~January 25~~, May, 2008

Josy W. Ingersoll (No. 1088)

[John W. Shaw \(No. 3362\)](#)

[Karen L. Pascale \(No. 2903\)](#)

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

IOVATE HEALTH SCIENCES U.S.A., INC., et al.,

Plaintiffs,

v.

WELLNX LIFE SCIENCES INC., et al.,

Defendants.

C.A. No. 07-286-JJF

RULE 7.1.1 STATEMENT

Pursuant to 7.1.1 of the Local Rules of the United States District Court for the District of Delaware, I hereby certify that counsel for Plaintiffs has made a reasonable effort to reach agreement with counsel for Defendants on the matters set forth in Plaintiffs' "Motion to Substitute Plaintiff Pursuant to Fed. R. Civ. P. 25(c)," and that the parties have not been able to reach agreement.

YOUNG CONAWAY STARGATT & TAYLOR LLP

/s/ Karen L. Pascale

April 8, 2008

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FOR THE DISTRICT OF DELAWARE**

IOVATE HEALTH SCIENCES U.S.A., INC., et al.,

Plaintiffs,

v.

WELLNX LIFE SCIENCES INC., et al.,

Defendants.

C.A. No. 07-286-JJF

NOTICE OF MOTION

TO: Mary B. Graham, Esq.
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PLEASE TAKE NOTICE that Plaintiffs Iovate Health Sciences U.S.A., Inc. and Iovate T&P, Inc., will present their “Motion to Substitute Plaintiff Pursuant to Fed. R. Civ. P. 25(c)” to the Court on Friday, May 9, 2008 at 10:00 a.m., or as soon thereafter as is convenient to the Court.

YOUNG CONAWAY STARGATT & TAYLOR LLP

/s/ Karen L. Pascale

April 8, 2008

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

IOVATE HEALTH SCIENCES U.S.A., INC., et al.,

Plaintiffs,

V.

WELLNX LIFE SCIENCES INC., et al.,

Defendants.

C.A. No. 07-286-JJF

ORDER

At Wilmington this ____ day of _____, 2008, having reviewed Plaintiffs’
“Motion to Substitute Plaintiff Pursuant to Fed. R. Civ. P. 25(c),” and the papers submitted in
connection therewith; and the oral argument (if any) of counsel for the respective parties;

IT IS HEREBY ORDERED that:

1) Plaintiffs' Motion (D.I. ____) is GRANTED. "Iovate Health Sciences, Inc" is hereby substituted for "Iovate Health Sciences, U.S.A., Inc." as a plaintiff in this action.

2) The full caption in this action shall now be as follows:

IOVATE HEALTH SCIENCES, INC., and

IOVATE T & P, INC.,

Plaintiffs,

V.

WELLNX LIFE SCIENCES INC (d/b/a NV Inc.),

NXCARE INC.,

NXLABS INC.,

BIOGENETIX,

DEREK WOODGATE, and

BRADLEY WOODGATE.

Defendants.

C.A. No. 07-286-JJF

UNITED STATES DISTRICT JUDGE